

AMENDED IN SENATE SEPTEMBER 4, 2015

AMENDED IN SENATE JULY 1, 2015

AMENDED IN ASSEMBLY APRIL 30, 2015

AMENDED IN ASSEMBLY APRIL 20, 2015

AMENDED IN ASSEMBLY APRIL 14, 2015

AMENDED IN ASSEMBLY MARCH 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 691

Introduced by Assembly Member Calderon

(Coauthors: Assembly Members Travis Allen, Chang, Chávez, Chu, Dababneh, Cristina Garcia, Gatto, Gonzalez, Steinorth, and Waldron)

February 25, 2015

An act to add Part 20 (commencing with Section 870) to Division 2 of the Probate Code, relating to estates.

LEGISLATIVE COUNSEL'S DIGEST

AB 691, as amended, Calderon. The Privacy Expectation Afterlife and Choices Act (PEAC) Act.

Existing law provides for the disposition of a testator's property by will. Existing law also provides for the disposition of that portion of a decedent's estate not disposed of by will. Existing law provides that the decedent's property, including property devised by a will, is generally subject to probate administration, except as specified.

This bill would establish the Privacy Expectation Afterlife and Choices Act, which would authorize a defined electronic communication service

or remote computing service (provider) to disclose specified information pertaining to the account of a deceased user to the personal representative of the decedent's estate or the trustee of the decedent's trust if provided with prescribed information. The bill would authorize a probate court with jurisdiction over the deceased user's estate or trust to order disclosure of certain information if the court makes specified findings, including that the request for disclosure is narrowly tailored to the purpose of administering the estate or trust. The bill would prescribe circumstances under which the provider would not be compelled to disclose a record or the contents of a communication and would exempt a provider from liability for disclosing records or contents as required or permitted by the act.

~~This bill would establish the Privacy Expectation Afterlife and Choices Act, which would authorize a probate court to order an electronic communication service or remote computing service provider, as defined, to disclose to the executor or administrator of the estate or the trustee of the trust a record or other information pertaining to the account of the deceased user that is in electronic storage with the provider. The bill would require the probate court to make specified findings in order to require this disclosure, including that the executor, administrator, or trustee demonstrates a good faith belief that the information requested is relevant to resolve issues regarding assets or liabilities of the estate. The bill would additionally require the court to find that the decedent expressed consent to the disclosure of the contents of communications or stored contents, as specified, in order to require the disclosure of those documents. The bill would permit a provider to disclose a decedent's account information if the executor, administrator, or trustee gives the provider documents and information, as specified. The bill would additionally permit a provider to disclose contents of communications or stored contents if an executor, administrator, or trustee gives the provider documents and information, as specified, including a will or trust showing the decedent's express consent for disclosure of the contents. The bill would allow a provider to require the requester to pay the direct costs of producing a copy of the record or other information pertaining to the account of the deceased, when those records are not already available for production during the ordinary course of business. The bill would exempt the provider from disclosure if the deceased user expressed an intent to disallow disclosure by either deleting the records or contents during the user's lifetime, or affirmatively indicating, through a setting within the product or service,~~

~~of how the user's records or the content of communications can be treated after a set period of inactivity or other event. The bill would also exempt the provider from civil liability for disclosing records or contents as required or permitted under this act.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 20 (commencing with Section 870) is added
2 to Division 2 of the Probate Code, to read:

3
4 PART 20. PRIVACY EXPECTATION AFTER LIFE AND CHOICES

5
6 870. This part shall be known, and may be cited, as the Privacy
7 Expectation Afterlife and Choices Act.

8 871. (a) A provider may disclose to the personal representative
9 of the estate of the deceased user or the trustee of the deceased
10 user's trust, a record or other information pertaining to the account
11 of the deceased user that is in electronic storage with the provider,
12 but not the contents of electronic communications or stored
13 contents, if the personal representative or trustee gives the provider
14 all of the following:

15 (1) A written request for the record or information that is
16 narrowly tailored to the purpose of administering the estate or
17 trust.

18 (2) A copy of the death certificate of the deceased user or a copy
19 of a written certification authorized pursuant to Section 7603.

20 (3) Identification of the account belonging to the deceased user
21 made with sufficient specificity that the information given allows
22 the provider to identify the account of the deceased user.

23 (b) A provider may disclose to the personal representative of
24 an estate or the trustee of a trust the contents of communications
25 or stored contents if the personal representative or trustee gives
26 the provider both of the following:

27 (1) All of the items required pursuant to subdivision (a).

28 (2) The will, trust, or evidence of a choice made by the deceased
29 user within the product or service evidencing the deceased user's
30 express consent for disclosure of the contents to the personal
31 representative or trustee.

1 (c) A provider may decline to respond to a request pursuant to
2 subdivision (a) because of a concern that complying with the
3 request may violate any other legal authority, be contrary to the
4 wishes of the user, or be otherwise inappropriate. Under any of
5 those circumstances, a probate court that has jurisdiction over the
6 estate or trust of the deceased user may order a provider to disclose
7 to the personal representative of the estate or the trustee of the
8 trust, a record or other information pertaining to the account of
9 the deceased user that is in electronic storage with the provider,
10 but not the contents of communications or stored contents, if the
11 court makes all of the following findings of fact based upon a
12 sworn declaration, indicating the good faith belief and efforts of
13 the personal representative or trustee, or any other admissible
14 evidence:

15 (1) The user is deceased.

16 (2) The deceased user was the subscriber to, or customer of,
17 the provider.

18 (3) The account belonging to the deceased user has been
19 identified with sufficient specificity that the information given
20 allows the provider to identify the account of the deceased user.

21 (4) There are no other owners of, or persons or entities who
22 have registered with the provider with respect to, the account of
23 the deceased user.

24 (5) Disclosure is not in violation of another applicable federal
25 or state law.

26 (6) The request for disclosure is narrowly tailored to the purpose
27 of administering the estate or trust.

28 (7) The personal representative or trustee demonstrates a good
29 faith belief that the information requested is relevant to resolve
30 matters regarding assets or liabilities of the estate or trust.

31 (8) The request seeks information spanning no more than 18
32 months immediately prior to the date of death, or the requester
33 has made a request for information that specifically requests data
34 older than 18 months immediately prior to the date of death.

35 (9) The request is not in conflict with the will, trust, or other
36 written, electronic, or oral expression of the deceased user's intent
37 regarding access to, or disposition of, information contained in
38 or regarding the account of the deceased user.

39 (d) A provider may decline to respond to a request pursuant to
40 subdivision (b) because of a concern that complying with the

1 *request may violate any other legal authority, be contrary to the*
2 *wishes of the deceased user, or be otherwise inappropriate. Under*
3 *those circumstances, a probate court that has jurisdiction of the*
4 *estate or trust of the deceased user may order a provider to disclose*
5 *to the personal representative or the trustee the contents of*
6 *communications or stored contents, if the court makes all of the*
7 *following findings of fact based upon a sworn declaration,*
8 *indicating the good faith belief and efforts of the personal*
9 *representative or trustee, or any other admissible evidence:*

10 *(1) The will or trust of the deceased user, or a choice made by*
11 *the deceased user as part of the product or service, regarding the*
12 *manner in which the contents may be used after a set period of*
13 *inactivity after the death of the user; or other event evidences the*
14 *express consent of the user to the disclosure of the requested*
15 *contents.*

16 *(2) The findings required by paragraphs (1) to (8), inclusive,*
17 *of subdivision (c).*

18 *(e) If a probate proceeding has not been opened, following a*
19 *denial from a provider pursuant to subdivision (c) or (d), a*
20 *personal representative or trustee may file a verified petition*
21 *seeking an order compelling the provider to provide the requested*
22 *records or information. This petition shall be filed in the superior*
23 *court of the county agreed to by the user in the terms of service*
24 *agreement or, in the absence of that agreement, the county in which*
25 *the deceased user resided at death. The petitioner shall be the*
26 *personal representative of the deceased user or, if none, the*
27 *successor trustee of a revocable trust created by the deceased user*
28 *or the deceased user's successor in interest, as defined in Section*
29 *377.11 of the Code of Civil Procedure. A probate proceeding does*
30 *not need to be opened in order for this petition to be filed and*
31 *resolved. The petition shall be titled in the name of the deceased*
32 *user and shall set forth all of the facts required under subdivision*
33 *(b) or (c).*

34 *(f) Except as provided in subdivision (g), a provider shall*
35 *disclose to the personal representative of the estate or the trustee*
36 *of the trust the contents of communications or stored contents of*
37 *the deceased user's account, to the extent reasonably available,*
38 *only if the personal representative or trustee gives the provider*
39 *all of the following:*

1 (1) A written request for the contents of the account of the
2 deceased user.

3 (2) A copy of the death certificate of the deceased user.

4 (3) An order of the probate court with jurisdiction over the
5 estate or trust of the deceased user that includes both of the facts
6 required in subdivision (b).

7 (g) A provider served with an order compelling disclosure of
8 deceased user records or contents pursuant to this section may
9 make a motion to vacate or modify the order within 90 days after
10 receiving the order. Upon a motion and a showing of good cause,
11 the court may limit this time frame to 60 days. The court may do
12 any of the following:

13 (1) Modify the order to the extent that the court finds that
14 compliance with the order would cause an undue burden on the
15 provider, or quash the order if the court finds that the order cannot
16 be modified so as to avoid the undue burden. However, a cost that
17 the requester offers to pay pursuant to subdivision (h) shall not
18 be considered by a court in making a determination whether the
19 request constitutes an undue burden.

20 (2) Vacate the order if any of the applicable requirements of
21 subdivision (a) or (b) are not met.

22 (3) Vacate the order if the court finds, based upon the
23 preponderance of the evidence submitted by the provider or any
24 other person, that any of the circumstances set forth in Section
25 872 apply.

26 (h) A provider may require the requester to pay the direct costs
27 of producing a copy of the record or other information pertaining
28 to the account of the deceased user when those records are not
29 already available for production during the ordinary course of
30 business.

31 872. A provider shall not be compelled to disclose a record or
32 the contents of communications if any of the following apply:

33 (a) The deceased user expressed an intent to disallow disclosure
34 through either deletion of the records or contents during the user's
35 lifetime, or an affirmative indication, through a setting within the
36 product or service, of the manner in which the user's records or
37 the contents of communications are to be used after a set period
38 of inactivity or other event.

1 (b) *The provider is aware of any indication of lawful access to*
2 *the account after the date of the deceased user's death or that the*
3 *account is not that of the deceased user.*

4 (c) *Disclosure would violate other applicable law, including,*
5 *but not limited to, electronic communications privacy provisions*
6 *or copyright law.*

7 873. (a) *Disclosure of the contents of the deceased user's*
8 *account to the personal representative of the estate or the trustee*
9 *of the trust is subject to the same license, restrictions, terms of*
10 *service, and legal obligations, including copyright law, that applied*
11 *to the deceased user.*

12 (b) *This part does not require a provider to permit a requesting*
13 *party to assume control of a deceased user's account.*

14 874. *A provider is not liable for disclosing records or contents*
15 *as required or permitted pursuant to this part.*

16 875. *As used in this part, the following definitions shall apply:*

17 (a) *"Asset" means anything of financial value that is part of*
18 *the estate of the decedent.*

19 (b) *"Contents" means information concerning the substance,*
20 *purport, or meaning of communications, including the subject line*
21 *of the communication and data stored by a remote computer service*
22 *on behalf of the user.*

23 (c) *"Electronic communication" shall have the same meaning*
24 *as in Section 2510 of Title 18 of the United States Code.*

25 (d) *"Electronic communication service" means a service that*
26 *provides to users the ability to send or receive wire or electronic*
27 *communications.*

28 (e) *"Electronic communications system" means a wire, radio,*
29 *electromagnetic, photooptical, or photoelectronic facility for the*
30 *transmission of wire or electronic communications and any*
31 *computer facilities or related electronic equipment for the*
32 *electronic storage of those communications.*

33 (f) *"Provider" means an electronic communication service or*
34 *remote computing service.*

35 (g) *"Record" means a record regarding a communication sent*
36 *or received by a subscriber or user of an electronic communication*
37 *service or remote computing service, including, but not limited to,*
38 *account logs that record account usage and online addresses of*
39 *other individuals with whom the account holder has communicated.*

1 (h) “Remote computing service” means a service that provides
2 computer storage or processing services to the public by means
3 of an electronic communications system.

4 (i) “Undue burden” shall be interpreted consistently with the
5 interpretation of that term as used in Section 2031.310 of the Code
6 of Civil Procedure.

7 (j) “User” means a person or entity who has lawfully obtained
8 credentials to access an account with a provider in a manner
9 consistent with the terms of service that apply to that account.

10 SECTION 1. Part 20 (commencing with Section 870) is added
11 to Division 2 of the Probate Code, to read:

12
13 PART 20. PRIVACY EXPECTATION AFTERLIFE AND
14 CHOICES

15
16 870. This part may be known, and may be cited, as the Privacy
17 Expectation Afterlife and Choices Act.

18 871. (a) A probate court that has jurisdiction of the estate of
19 the deceased user may order a provider to disclose to the executor
20 or administrator of the estate or the trustee of the trust a record or
21 other information pertaining to the account of the deceased user
22 that is in electronic storage with the provider, but not the contents
23 of communications or stored contents, if the court makes all of the
24 following findings of facts based upon a sworn declaration of the
25 personal representative or other admissible evidence:

26 (1) The user is deceased.

27 (2) The deceased user was the subscriber to or customer of the
28 provider.

29 (3) The account belonging to the deceased user has been
30 identified with specificity such that the information given allows
31 the provider to identify the decedent’s account.

32 (4) There are no other owners of, or persons or entities who
33 have registered with the provider with respect to, the deceased
34 user’s account.

35 (5) Disclosure is not in violation of another applicable federal
36 or state law.

37 (6) The request for disclosure is narrowly tailored to the purpose
38 of administering the estate.

1 ~~(7) The executor, administrator, or trustee demonstrates a good~~
2 ~~faith belief that the information requested is relevant to resolve~~
3 ~~issues regarding assets or liabilities of the estate.~~

4 ~~(8) The request seeks information spanning no more than 18~~
5 ~~months prior to the date of death, or the requester has made a~~
6 ~~request for information that specifically requests data older than~~
7 ~~18 months prior to the date of death.~~

8 ~~(9) The request is not in conflict with the deceased user's will,~~
9 ~~trust, or other written, electronic, or oral expression of the deceased~~
10 ~~user's intent regarding access to or disposition of information~~
11 ~~contained in or regarding the user's account.~~

12 ~~(b) A probate court that has jurisdiction of the estate of the~~
13 ~~deceased user may order a provider to disclose to the executor or~~
14 ~~administrator of the estate or the trustee of the trust the contents~~
15 ~~of communications or stored contents, if the court makes all of the~~
16 ~~following findings of facts based upon a sworn declaration of the~~
17 ~~personal representative or other admissible evidence:~~

18 ~~(1) The will or trust of the decedent, or a choice made by the~~
19 ~~deceased user within the product or service or otherwise regarding~~
20 ~~how the user's contents can be treated after a set period of inactivity~~
21 ~~after the user's death, or other event evidences the decedent's~~
22 ~~express consent to the disclosure of the requested contents.~~

23 ~~(2) The findings required by paragraphs (1) to (8), inclusive, of~~
24 ~~subdivision (a).~~

25 ~~(c) Except as provided in subdivision (g), a provider shall~~
26 ~~disclose to the executor or administrator of the estate or the trustee~~
27 ~~of the trust the contents of the deceased user's account, to the~~
28 ~~extent reasonably available, if the executor, administrator, or trustee~~
29 ~~gives the provider all of the following:~~

30 ~~(1) A written request for the contents of the deceased user's~~
31 ~~account.~~

32 ~~(2) A copy of the death certificate of the deceased user.~~

33 ~~(3) An order of the probate court with jurisdiction over the estate~~
34 ~~or trust of the deceased that includes all of the findings required~~
35 ~~in subdivision (b).~~

36 ~~(d) A provider may disclose to the executor, administrator, or~~
37 ~~trustee a record or other information pertaining to the account of~~
38 ~~the deceased user that is in electronic storage with the provider,~~
39 ~~but not the contents of communications or stored contents, if the~~

1 executor, administrator, or trustee gives the provider all of the
2 following:

3 (1) A written request for the record or information that is
4 narrowly tailored to the purpose of administering the estate or
5 trust.

6 (2) A copy of the death certificate of the deceased user.

7 (3) Identification of the account belonging to the deceased user
8 made with specificity such that the information given allows the
9 provider to identify the decedent's account.

10 (e) An electronic service provider may disclose to the executor
11 or administrator of an estate or the trustee of a trust the contents
12 of communications or stored contents if the executor, administrator,
13 or trustee gives the provider both of the following:

14 (1) All of the items required under subdivision (d).

15 (2) The will or trust of the deceased user showing the deceased
16 user's express consent for disclosure of the contents to the executor,
17 administrator, or trustee.

18 (f) A provider shall not be held liable for disclosing records or
19 contents as required or permitted under this act.

20 (g) A provider served with an order compelling disclosure of
21 deceased user records or contents pursuant to this section may
22 make a motion to quash or modify the order within a reasonable
23 time after receiving the order. The court shall do any of the
24 following:

25 (1) Modify the order to the extent that the court finds that
26 compliance with the order would cause an undue burden on the
27 provider, or quash the order if the court finds that the order cannot
28 be modified so as to avoid the undue burden. However, a cost that
29 the requester offers to pay pursuant to subdivision (e) shall not be
30 considered when a court is making a determination whether the
31 request constitutes an undue burden.

32 (2) Quash the order if any of the applicable requirements of
33 subdivision (a) or (b) are not met.

34 (3) Quash the order if the court finds, based upon the
35 preponderance of the evidence submitted by the provider or any
36 other person, that any of the circumstances set forth in Section 872
37 apply.

38 (h) A provider may require the requester to pay the direct costs
39 of producing a copy of the record or other information pertaining

1 to the account of the deceased, when those records are not already
2 available for production during the ordinary course of business.

3 872. A provider shall not be compelled to disclose a record or
4 the contents of communications if any of the following apply:

5 (a) The deceased user expressed an intent to disallow disclosure
6 through either deletion of the records or contents during the user's
7 lifetime, or an affirmative indication, through a setting within the
8 product or service, of how the user's records or the content of
9 communications can be treated after a set period of inactivity or
10 other event.

11 (b) The provider is aware of any indication of lawful access to
12 the account after the date of the deceased user's death or that the
13 account is not that of the deceased user.

14 (c) Disclosure would violate other applicable law, including,
15 but not limited to, electronic communications privacy provisions
16 or copyright law.

17 873. (a) Disclosure of the contents of the deceased user's
18 account to the executor or administrator of the estate or the trustee
19 of the trust shall be subject to the same license, restrictions, terms
20 of service, and legal obligations, including copyright law, that
21 applied to the deceased user.

22 (b) Nothing in this part shall be construed to require a provider
23 to permit a requesting party to assume control of a deceased user's
24 account.

25 874. A provider shall not be held liable for compliance in good
26 faith with a court order issued pursuant to this part.

27 875. As used in this part, the following definitions shall apply:

28 (a) "Asset" means anything of financial value that is part of the
29 estate of the decedent.

30 (b) "Authorized user" or "user" means a person or entity who
31 has lawfully obtained credentials to access an account with an
32 electronic communication service in a manner consistent with the
33 terms of service that apply to that account.

34 (c) "Contents" means information concerning the substance,
35 purport, or meaning of communications and includes the subject
36 line of the communication.

37 (d) "Electronic communication" means a transfer of signs,
38 signals, writing, images, sounds, data, or intelligence of any nature
39 that is transmitted, in whole or in part, by a wire, radio,
40 electromagnetic, or photooptical system that affects interstate or

foreign commerce. “Electronic communication” does not include any of the following:

- (1) Wire or oral communication.
- (2) Communication made through a tone-only paging device.
- (3) Communication from a tracking device.
- (4) Electronic funds transfer information stored by a financial institution in a communication system used for the electronic storage and transfer of funds.

(e) “Electronic communication service” means a service that provides to users the ability to send or receive wire or electronic communication.

(f) “Electronic communications system” means a wire, radio, electromagnetic, photooptical, or photoelectronic facility for the transmission of wire or electronic communications and any computer facilities or related electronic equipment for the electronic storage of those communications.

(g) “Provider” means an electronic communication service or remote computing service.

(h) “Record” means a record regarding a communication sent or received by a subscriber or user of an electronic communication service or remote computing service, including, but not limited to, account logs that record account usage, cell-site data for mobile telecommunications calls, and online addresses of other individuals with whom the account holder has communicated.

(i) “Remote computing service” means providing computer storage or processing services to the public by means of an electronic communications system.

(j) “Undue burden” shall be interpreted consistently with the interpretation of that term as used in Section 2031.310 of the Code of Civil Procedure.